

STATE OF INDIANA)
)
COUNTY OF MARION) IN THE MARION SUPERIOR COURT
)
) CIVIL DIVISION, ROOM 5

MARK E. STUDLER,

Plaintiff,

v.

INDIANA BUREAU OF MOTOR
VEHICLES and RONALD L. STIVER,
in his official capacity as Commissioner
of the Indiana Bureau of Motor Vehicles,

Defendants.

CAUSE 49D05-0704-PL-016603

FILED

(228)

APR 10 2008

Elizabeth L. White
CLERK OF THE MARION CIRCUIT COURT

**ORDER GRANTING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Comes now, Gary L. Miller, Judge of the Marion Superior Court, Civil Division, Room 5, and having set this matter for hearing on the Cross Motions for Summary Judgment filed by the parties, the Court now finds as follows:

1. Indiana law provides that motor vehicles operated on the roads must be registered with the Indiana Bureau of Motor Vehicles ("BMV"). The BMV issues each registered motor vehicle a license plate to demonstrate that the vehicle has been properly registered. Motor vehicles must be registered with the BMV on an annual basis, which includes the payment of all applicable taxes and fees.
2. The BMV offers a variety of license plates. The fees that a registrant must pay for each type of license plate vary based on the type of motor vehicle that is registered; and the license plate the registrant selects for that motor vehicle. All registrants must pay an annual registration fee for each vehicle that they register. The annual

registration fee varies depending on the type of vehicle that is registered. The annual registration fee for a passenger car is \$20.75, while the annual registration fee for a truck varies depending on the gross weight of the truck.

3. Beyond the basic fees, the Indiana General Assembly has created a special class of license plates subject to additional fees called "Special Group Recognition Plates". Special Group Recognition Plates recognize particular groups, usually with a logo or other special symbol on the plate itself, and often serve as a means of raising money for the sponsoring group. For example, several Indiana colleges and universities, the Indianapolis Colts, Indiana Rotary, and the Indiana Heritage Trust have Special Group Recognition Plates.

4. If a registrant chooses a plate that is part of the Special Group Recognition Plate program, the BMV assesses an "administrative fee" and often, depending on the group being recognized, a "group fee." By statute and BMV regulations, the administrative fee applies to Special Group Recognition Plates only. The group fee is the amount that a group sponsoring a Special Group Recognition Plate elects to receive as a donation, up to \$25.00 per plate.

5. There are two ways in which a Special Group Recognition Plate may be created. First, the General Assembly has directed the BMV to create Special Group Recognition Plates by statute. For example, the General Assembly directed the BMV to create the Indiana Environmental Trust License Plate. Second, a group wishing to sponsor a plate—and thereby have the option to receive group fees paid by plate purchasers—may petition the BMV to establish one.

6. Groups wishing to establish a Special Group Recognition Plate must submit their petitions to the BMV no later than March 31 of the year prior to the calendar year in which they wish to sell their Special Group Recognition Plates. The petition must contain the following information: (1) the name of the group, (2) the purpose of the group, (3) when the group was established, (4) the number of members of the group, (5) the "unique significance" of the group, (6) the group's objective for issuing Special Group Recognition Plates, (7) a sworn statement by an officer that the group does not discriminate in the selection of its members or in the services it provides, (8) the group's intended use of funds generated by the sale of the plates, (9) a certified copy of the group's charter or articles of incorporation, (10) a color drawing of the group's preliminary plate design, and (11) a description of who would be eligible to receive the group's Plate. The BMV must review the petition and inform the group no later than May 1 whether it has approved the application.

~~7. If the BMV approves the application, the group must then submit by July 31~~
of the year preceding sale a list of signatures of at least 500 individuals who have submitted applications to receive the Special Group Recognition Plate. The group must also post a surety bond with the BMV for \$6,000 to ensure proceeds equaling the sale of 500 plates. If the BMV sells fewer than 500 plates in the first year the plate is available, the sponsoring group must pay the BMV \$12 for each plate less than 500. If the group does not sell 500 plates in the first year, a surety bond is required for the second year as well. Once the group's sales reach 500 plates, the BMV releases the bond.

8. Each sponsoring group must work with the BMV to design its plate. The group submits a proposed design to the BMV, and the BMV reviews the design to

determine if it is feasible given space restrictions and printing limitations imposed by the supplier, PEN Products. After reviewing the proposed design, the BMV, in conjunction with PEN Products, will either approve the design or offer alternative designs to the group. This process can involve several exchanges of designs among the BMV, PEN Products, and the sponsoring group. PEN Products charges each group a one-time fee of \$450.00 for its role in helping to create the design of the Special Group Recognition Plate and for producing samples of the plates. The BMV handles this transaction for PEN by charging the group and later remitting the money to PEN Products. The BMV receives no other compensation from the sponsoring group for its role in the design process.

9. In the case of the Indiana Environmental Trust Plate, the BMV and PEN Products consulted with the Indiana Department of Natural Resources, who was responsible for making decisions regarding the design of the Indiana Environmental License Plate.

10. After approving a Special Group Recognition Plate design, the BMV directs PEN Products to begin producing the plate for issuance the following year. After a Special Group Recognition Plate enters the production process, the BMV has additional responsibilities. The BMV must store the Special Group Recognition Plates in its warehouse, monitor and maintain an inventory of each plate, order more of each plate from PEN Products when needed, and distribute each plate to the BMV branches for sale. These administrative tasks involves keeping separate inventories for each Special Group Recognition Plate, forecasting overall demand for each plate, and forecasting demand at each branch to ensure proper stocks.

11. The BMV also monitors the sales of each Special Group Recognition Plate, including the Indiana Environmental Trust Plate. If motorists purchase fewer than 2,000 of a Special Group Recognition Plate within the first four years in which it is offered, the BMV must terminate the plate. The BMV continues to monitor the sales of each Special Group Recognition Plate in all subsequent five-year cycles. If in the first four years of any five-year cycle motorists' purchases fewer than 2,000 of any Special Group Recognition Plate, then the BMV must terminate the plate, even if it was created by statute.

12. Under Indiana law, a group fee, or donation to the group being recognized, may apply to Special Group Recognition Plates, although some groups have opted not to collect a group fee.

13. If a sponsoring group is willing to collect its own group fee, it may set that fee in any amount from no fee at all up to \$25.00. For example, the Freemasons have set their group fee at \$10.00, while Manchester College has set its group fee at \$25.00. Huntington University, IPFW, and Indiana Wesleyan University have chosen not to require a group fee at all. A sponsoring group that collects its own group fee may elect to change the amount of its group fee during any year by giving notice to the BMV. Although this requires no changes in fee collection for the BMV, the BMV must still track the fees assessed by each group for purposes of website advertisement and other promotional purposes.

14. If the sponsoring group collects the group fee on its own, it must then issue documentation proving that the registrant has paid the group fee and, therefore, is eligible to receive the sponsor group's Special Group Recognition Plate. Registrants must take this documentation to a BMV branch to demonstrate that they are eligible to receive the

sponsor group's Special Group Recognition Plate. The BMV branches have created files in which to retain this documentation for three years.

15. A sponsoring group may request that the BMV collect the group fee on its behalf during the annual registration process. A sponsoring group may also elect to change the method of collection for its group fee in any given year by giving notice to the BMV by July 1 of the preceding year. Thus, a group that currently collects its own group fee may at some point in the future elect to have the BMV collect the group fee on its behalf.

16. If the BMV collects the group fee on behalf of the sponsor group, then the BMV must deposit the proceeds from the sale of the sponsor group's Special Group Recognition Plate in a trust fund established for that group. The State Treasurer invests the money in the sponsor group's fund and deposits any earnings back into the group's fund. Before the end of June 30 of each year, the BMV Commissioner distributes the money from each sponsor group's fund to the group. For many of the funds for which the BMV collects the group fee, not including the Indiana Heritage Trust, the Commissioner retains 5% of the proceeds of each sponsor group's fund to cover the costs of administering the fund.

17. For certain Special Group Recognition Plates created by statute, including the Indiana Environmental Trust Plate and the Kids First Trust Plate, the BMV collects the group fee and must remit the proceeds from the sale of the group's plate to the sponsor group each month.

18. The General Assembly has imposed an administrative fee of \$15.00 on Special Group Recognition Plates. The General Assembly has, however, specifically

exempted two Special Group Recognition plates from the administrative fee: Support Our Troops and Hoosier Veteran. The legislature has exempted these plates from the administrative fee even though the BMV charges a group fee for those plates. Group fees for both plates benefit the military family relief fund.

19. Of the \$15.00 administrative fee, \$5.00 stays with the BMV "for the purpose of administering [the special group recognition statute]," \$9.00 is distributed to the state license branch fund "for the purpose of paying the expenses incurred in administering [the state license branches]," and \$1.00 is distributed to the Crossroads 2000 fund "for the purpose of constructing or reconstructing state highways."

20. The General Assembly has by statute mandated that the BMV issue license plates that are *not* Special Group Recognition Plates. The main such plate is what has come to be called the "Standard Plate." Others include antique motor vehicle plates, recovery vehicle plates, Ex-Prisoner of War Plates, Disabled American Veteran Plates, Purple Heart Plates, Indiana National Guard Plates, Disability Plates, amateur radio operator plates, and Pearl Harbor Survivors Plates. For each of these plates, there is no possibility of donating to any group, and registrants pay no group fees or administrative fees.

21. In 2006, the General Assembly added a new plate to the list of non-Special Group Recognition Plates, the "In God We Trust" Plate. The BMV began issuing the In God We Trust Plate on January 1, 2007. The General Assembly specifically provided that the In God We Trust Plate was not a Special Group Recognition Plate and did not bear an administrative fee. The In God We Trust Plate creates no possibility of donating to any group, the BMV was not required to coordinate design and production with any outside

group, the BMV is not required to monitor sales to ensure they meet some annual minimum threshold, and the BMV need not collect documentation from group members demonstrating eligibility.

22. Plaintiff Mark Studler is a resident of Allen County, Indiana. Studler currently has an Indiana Environmental Trust Plate on his registered motor vehicle. Studler does not currently have any other license plates for any other vehicles, nor has he expressed any intention to purchase any other license plates in the future besides the Indiana Environmental Trust Plate.

CONCLUSIONS OF LAW

1. Article 1, § 23 of the Indiana Constitution provides that "[t]he General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which upon the same terms, shall not equally belong to all citizens."

2. The Indiana Supreme Court has explained that Article 1, § 23 imposes two requirements upon statutes that grant unequal privileges or immunities to differing classes of persons. First, if there is disparate treatment accorded by the legislation it must be reasonably related to inherent characteristics which distinguish the unequally treated classes. Second, if there is preferential treatment it must be uniformly applicable and equally available to all persons similarly situated.

3. In analyzing whether a statute complies with or violates the Constitution the Court must show deference to the discretion of the Legislature in trying to balance competing interests and the Legislature's reason for creating the distinction. One who challenges the constitutionality of the legislative scheme bears the burden to negate every conceivable basis which might have supported the classification. A court cannot substitute

its judgment for that of the legislature or delve into the legislative motives prompting such classification as long as the legislative classification is based upon substantial distinctions with reference to the subject matter.

4. Studler claims that "there is no inherent difference between [himself], wanting to express something through a specialty plate, and therefore obtaining an environmental plate, and a hypothetical neighbor, who wanting to express a different sentiment, obtains an 'In God We Trust' license plate." Thus, Studler characterizes the two classes as those persons desiring to express the "In God We Trust" message and those wishing to express the "pro-environment" message of the Indiana Environmental Trust Plate.

5. The Indiana Code makes no such distinction. It creates no group called "specialty plate," and creates no special class for the In God We Trust Plate based on its message. The Indiana Code imposes a \$15.00 administrative fee on Special Group Recognition Plates, including the Indiana Environmental Trust Plate, and does not impose an administrative fee on other plates. The classification created by the legislature has nothing to do with expression. It has to do with drawing generally useful categories based on general assumptions about relative administrative burdens.

6. Indiana Code bases fee classifications on the characteristics of the plates, not on any special characteristics of members of the class as claimed by Studler. Here, it is the characteristics of the license plates—Special Group Recognition Plate versus other plate—that defines the class, not characteristics—expressive or otherwise—of motor-vehicle registrants.

7. The General Assembly's decision to treat Special Group Recognition Plates different from other plates is accorded considerable deference. This court finds that the

decision to assess a \$15.00 administrative fee on Special Group Recognition Plates while not assessing the fee on other plates, including the In God We Trust Plate, is not arbitrary and manifestly unreasonable.

8. Special Group Recognition Plates impose more burdens on the BMV than other license plates. The General Assembly, therefore, reasonably concluded that Special Group Recognition Plates should bear an administrative fee to compensate for this increased burden. Studler argues that the differences in the treatment of plates within the Special Group Recognition Plate category preclude use of that classification, but each of the variations on which Studler relies can be readily explained and is legally justified.

9. The extra burdens associated with the Special Group Recognition Plates include

- (1) the group petition process;
- (2) design of group plates;
- (3) additional handling of plates;
- (4) collection of group fee or collection of proof that group fee has been paid; and
- (5) monitoring each group's sales.

10. Studler objects to the General Assembly's decision to treat the Indiana Environmental Trust Plate as a Special Group Recognition Plate while the In God We Trust Plate is not so treated because, he claims, "[t]he environmental plate is not a product of a group pursuant to Ind. Code § 9-18-25, but is a product of the General Assembly pursuant to Ind. Code § 9-18-29." He also asserts that "the environmental plate is no more a special group recognition plate under Ind. Code § 9-18-25 than the 'In God We Trust' license plate."

11. Not only has the General Assembly expressly designated the Indiana Environmental Trust Plate, but not the In God We Trust Plate, as a Special Group

Recognition Plate, but also a group—the Indiana Heritage Trust—benefits from the group fees charged for the Indiana Environmental Trust Plate. And even though the General Assembly expressly required the BMV to create the Indiana Environmental Trust Plate, that does not mean the BMV has incurred no extra burdens in the process of administering the plate. The BMV still had to design the plate by conferring with the DNR, and the BMV is still required to collect and remit group fees and to monitor the sales of the plate.

12. In contrast, the In God We Trust Plate is comparable to the Standard Plate. There is no group that benefits from the sale of In God We Trust Plates. Furthermore, it was designed by a process similar to the Standard Plate, mass produced like the Standard Plate, and widely distributed like the Standard Plate based on consistently high sales. The so-called “preferential treatment” it receives under Indiana law—*i.e.*, not being subject to an administrative fee—is also the same as the Standard Plate.

13. Studler disputes the relevance of the extra burdens associated with Special Group Recognition Plates because of how the General Assembly divides the \$15.00 administrative fee among various state funds. As noted, of the \$15.00 administrative fee, \$5.00 stays with the BMV “for the purpose of administering [the special group recognition statute],” \$9.00 is distributed to the state license branch fund “for the purpose of paying the expenses incurred in administering [the state license branches],” and \$1.00 is distributed to the Crossroads 2000 fund “for the purpose of constructing or reconstructing state highways.”

14. \$5.00 of the fee goes to pay for the Special Group Recognition Plate program. The remainder of the \$15.00 fee covers state expenses that might have been covered with resources otherwise devoted to the Special Group Recognition Plate

program. It makes no difference whether the General Assembly divides assignment of the administrative fee for purposes of expediency in accounting, or instead allocates the entire \$15.00 for Special Group Recognition Plate administration and then uses the budget to appropriate less to the BMV itself and more to the license branch operations and Crossroads 2000 fund. It is all state money so it all in some way offsets the burdens of the Special Group Recognition Plate program.

15. Courts are not to second-guess the Indiana General Assembly when it comes to calculations of this sort. The General Assembly understands that the Special Group Recognition Plate program imposes extra burdens on the BMV, so it mandates a user fee to cover those extra burdens. It need not precisely match the fee with the precise cost imposed by each plate; the General Assembly may treat the Special Group Recognition Plates as a distinct category and subject each to a user fee that it thinks will roughly cover the program's cost.

16. The General Assembly, having created a generally useful category of Special Group Recognition Plates, may treat all plates belonging to that category the same for purposes of charging an administrative fee, even though the plates vary in the degree of burden imposed upon the BMV.

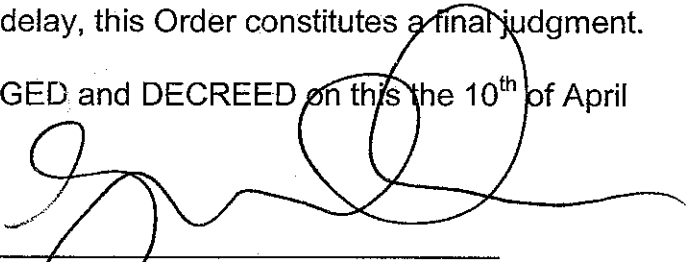
17. The General Assembly's treatment of the In God We Trust plate passes Article I, § 23 scrutiny. First, such treatment is reasonably related to inherent characteristics of all non-Special Group Recognition Plates. Those plates have no possibility of carrying a group fee and the BMV need not monitor sales. Second, such treatment is uniformly applicable and equally available to all similarly situated, particularly to all those plates that have no possibility of carrying a group fee to benefit a sponsoring or

statutorily prescribed organization. Here, the Environmental Trust Plate comes with a group fee and benefits a statutorily prescribed organization, and the BMV must monitor its sales, among other burdens, so it is not similarly situated with the In God We Trust Plate. Accordingly, the General Assembly need not treat the two plates the same.

For the foregoing reasons, Plaintiff's Motion for Summary Judgment is DENIED and Defendants' Motion for Summary Judgment is GRANTED.

There being no further reason for delay, this Order constitutes a final judgment.

All of which is ORDERED ADJUDGED and DECREED on this the 10th of April 2008.



Gary Miller
Marion Superior Court No. 5.

CC: parties of record